LIBRARY
SUPREME COURT, U. S.

FILED
JUN 2 1971
E. ROBERT SEAVER, CLERK

No. ~~6553~~ 70-5064

In the Supreme Court of the United States

OCTOBER TERM, 1970

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530

INDEX

	Page
Conclusion	13
Appendix	15

CITATIONS

Cases:

Dandrige v. *Williams*, 397 U.S. 471 — 9, 10

Engelman v. *Amos*, No. 931, October 1970 Term — 11, 13

Rosado v. *Wyman*, 397 U.S. 821 — 2, 4, 5, 6

Statutes:

28 U.S.C.:

Section 1253 — 2

Section 2281 — 2

28 U.S.C. 2284 — 2

42 U.S.C. (Supp. V):

Section 402(a)(8) — 5, 11, 12

Section 402(a)(10) — 8, 9, 12

Section 402(a)(23) — 1, 2, 3, 4, 6, 8

Miscellaneous:

95 Cong. Rec. 13934 (1949) — 10

H. Rep. No. 1300, 81st Cong., 1st Sess. (1949) — 9

426-469—71——1

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 6553

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted pursuant to the Court's invitation of March 29, 1971.

The appellants, Texas residents receiving assistance under the federally funded program of Aid to Families with Dependent Children (AFDC), raise two issues in this class action. First, they claim that the manner in which Texas determines the level of benefits it will pay AFDC recipients conflicts with the requirement of Section 402(a)(23) of the Social Security Act, 42 U.S.C. (Supp. V) 602(a)(23) "that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established." No other statutory issue was presented below. Second, they assert that

the challenged Texas practice has a racially discriminatory purpose or effect, and denies them equal protection of the laws.

Because appellants sought injunctive relief against the operation of a regulation of state-wide application on constitutional grounds, a three-judge district court was convened. 28 U.S.C. 2281, 2284. That court initially found for appellants on the statutory ground, *Jefferson* v. *Hackney*, 304 F. Supp. 1332 (N.D. Tex.), and on appeal this Court vacated and remanded for reconsideration, 397 U.S. 821, in light of *Rosado* v. *Wyman*, 397 U.S. 397. On remand, the three-judge court reaffirmed its earlier rejection of appellants' constitutional claims, and held that, given *Rosado*, no conflict between the Texas practice and Section 402 (a)(23) had been shown. Appellants brought a direct appeal to this Court from the order denying the requested injunctive relief. 28 U.S.C. 1253.

1. The Department of Health, Education and Welfare believes that the court below correctly decided the limited statutory question presented, whether the manner in which Texas determines the level of benefits it will pay AFDC recipients conflicts with Section 402(a)(23) of the federal Act, as explained in this Court's *Rosado* opinion.

Prior to the enactment of Section 402(a)(23), Texas limited the amount AFDC recipients could obtain by the imposition of statutory maximums. Under this procedure, a family's need would be calculated in accordance with a statewide standard of need; available income would be deducted from this

sum; and the family would then be paid the remainder or, if it was a lesser amount, the applicable maximum.[1]

When Section 402(a)(23) was enacted, Texas increased the amounts it used "to determine the needs of individuals" by 11 percent, an amount which the Department believes and the appellants appear not to dispute fully reflects the change in living costs which had occurred since the standard had been established. It did not, however, similarly adjust the applicable maximums. Rather, they were eliminated, and the state adopted instead the technique of ratably reducing the standard of need which is the subject of the present dispute. As presently constituted, the state regulations provide for a benefit level at 75 percent of calculated need. Unlike prior practice, however, any outside income is not deducted from the calculated need; instead, the 75 percent level is first computed, and attributable outside income is then subtracted to determine the amount of benefits due.[2] It is this feature of the plan which appellants principally challenge as being inconsistent with Section 402(a)(23).

---

[1] To repeat an example given in the text of the original district court opinion, 304 F. Supp. at 1343, the maximum for a family of five or more was $123 per month. A family of five, on the other hand, might have total recognizable needs of $178 under the statewide standard of need. They would receive $123 per month. If they obtained $60 per month from outside sources, their need would be reduced to $118, and they would receive that sum.

[2] Continuing the example of note 1, Texas would now recognize a family need of approximately $200 for the five member family. If it had no income, it would receive 75 percent of this sum, or $150. If it received unearned income of $60, however, that amount would be subtracted from the benefit, leaving a monthly benefit of $90. (If the income was earned, the cal-

Section 402(a)(23) requires "that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes * * * will have been proportionally adjusted." It makes no reference to the use of ratable reductions and, in particular, it says nothing about the manner in which such reductions are to be calculated relative to offsetting income the family receiving AFDC may obtain. In *Rosado* v. *Wyman, supra,* however, this Court characterized Section 402(a)(23) as having

> the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions. [397 U.S. at 413.]

Persons who receive attributable income of more than 75 percent, but less than 100 percent, of their calculated need under the Texas plan will be ineligible for benefits, although they have a "need" under the state standard; if their income were first subtracted from their need, and 75 percent taken of the remainder, on the other hand, they would be eligible.

---

culation would be somewhat more complicated. See pp. 11–12 *infra*.) Appellants believe this calculation must be made by first subtracting the $60, and then taking 75 percent of the remainder ($140), giving a benefit of $105, and a total monthly income of $165.

If the quoted language is a binding construction of the Act, appellants are thus entitled to prevail. Texas has avoided the stated effect for a limited class of its needy residents.[3] In the Department's view, however, that question was not before this Court in *Rosado,* and the statute in fact imposes no such requirement. It leaves the states free to employ ratable reductions to reduce their welfare expenses, and makes no judgment how those reductions are to be calculated in relation to outside income.

Rosado presented a situation in which the state, New York, paid 100 percent of "need" and the issue was whether the required cost-of-living adjustment had been made. The Court specifically rejected a contention that the statute required an absolute increase in benefit levels, agreeing with the Department's submission that it left states "free to effect downward adjustments in the level of benefits paid" within a framework which would force them "to accept the political consequence of such a cutback and [bring] to light the true extent to which actual assistance falls short of the minimum acceptable." 397 U.S. at 413.

[3] With reduction to 75 percent of need, the effect is avoided only for those needy residents who have *unearned* income in an amount less than need but greater than the ratably reduced standard. That is, under Section 402(a)(8), see n. 6, *infra*, a person earning $228 per month ($200 net after $28 work expenses) would have $30 plus one-third of the remainder ($198) disregarded, and then have his work expenses subtracted. Subtracting $30+$66+$28 from $228 leaves $104 in attributable income, which does not defeat eligibility. Thus, the effect of Section 402(a)(8) is that persons with earned income in a net amount of $200 would not cease to be eligible for benefits until the ratable reduction dropped to 52 percent of need.

In *Rosado,* no such cutback had been made, and so there was no question whether it could be made in a way that denied benefits to individuals who received income in an amount less than the state standard of need, but greater than the amount of assistance which would be paid to an individual who received no income at all.

Indeed, *Rosado* recognized that one purpose of Section 402(a)(23) was "to prod the States to apportion their payments on a more equitable basis." *Ibid.* While that language refers to an incentive in the statute to abandon the use of statutory maximums, as Texas in fact has done, it also describes the method of calculation Texas has adopted. Texas is faced with a total statewide demand for welfare payments which it is unable or chooses not to meet. As a means of adjusting the demand to these budgetary realities, Texas' method has the advantage of allocating a larger proportion to those who need assistance most.

Thus, the Texas plan assures a total income of $150 per month to any family with needs of $200, by providing in the form of welfare assistance the difference between any attributable income the family receives and $150, 75 percent of the calculated need. If the family has $60 attributable income, it gets a benefit of $90; if $175, no benefit; and if it has no attributable income, $150 benefit. If, on the other hand, the state were required to apply its ratable reduction to the deficit between income and need, families with attributable income would be favored by receiving larger benefits: the family with $60 income would

receive a percentage of $140; the family with $175 income, a percentage of $25.

If the state had these obligations, maintaining a 75 percent level of payments would obviously become more expensive; or, in other words, to stay within the same budgetary limitations, the percentage level of payments would have to be reduced. As a result, the family with no income at all might have to make do with 65 percent or 70 percent of its needs, so that the families receiving income could receive amounts which would bring them above that level.[4] It is true that under the Texas plan families with attributable incomes below their needs yet above the Texas percentage reduction are ineligible for the care and training provisions to which the Court refered in *Rosado*.[5] But the Department does not believe that that consequence takes Texas' approach outside the statute, or renders it

[4] If the reduction in this example were 70 percent, a family without income would receive $140; a family with $60 income would receive an additional $98, for a total of $158 (79 percent of need); and a family with $175 income would receive an additional $17.50, for a total of $192.50 (96 percent of need). The total cost to the state for these three families would be $255.50. For the same three families using the Texas method and a 75 percent reduction, the benefits would be $150, $90, and $0, respectively, and the total cost to the state is $240. While it is probably true that there are many more eligible families with little or no income than otherwise eligible families with attributable income in the $150–$200 range, so that the effect on state costs would be less dramatic than in the example, some such effect would be a necessary consequence of adopting the appellants' view.

[5] The Department's statistical service informs us that the value of medical assistance to an average Texas AFDC family is in the range of $50–$60 per month. The value of social services and training is too speculative to be estimated.

426-469—71——2

less equitable than other means of apportionment which the state might have adopted.

The Department has approved the Texas method, not only for Texas, but for all other states using it. A total of 26 jurisdictions use a ratable reduction of benefits, either alone or in connection with a maximum; of these, 19, including Texas, apply any attributable income to a ratably reduced standard of need rather than first applying income to need and then applying the ratable reduction to any remainder. See the Appendix *infra*. This diversity of methods existed when the 1967 Social Security Act Amendments, including Section 402(a)(23), were enacted. Congress looked into some of the mechanics of determining the amount of payment at the time, and enacted in Section 402(a)(23) its first reference to the need standard. But nothing of which we are aware in the legislative history shows any purpose to end this diversity of method, which reflects the very broad flexibility states have always had in choosing the methods to be used in determining the amount of assistance payments.

2. The statutory issue raised below was limited to Section 402(a)(23), and to that extent appellants' present reliance on Section 402(a)(10) is undeveloped. The Department believes, however, that, as in the case of the asserted conflict with *Rosado*, appellants' contention is based on *dictum* in an opinion of this Court rather than the statute itself, and that on study of the issue presented Texas' plan would be found to conform.

Section 402(a)(10) provides that AFDC benefits must "be furnished with reasonable promptness to all eligible individuals." Appellants' contention is that, since anyone with less than $200 in available resources is considered "needy" under the Texas standard of need, the denial of benefits under the 75 percent reduction to persons with attributable income of more than $150 but less than $200 constitutes a failure to furnish benefits to "all eligible individuals." In support of this construction, they rely upon this Court's characterization of Section 402(a)(10) in *Dandridge* v. *Williams*, 397 U.S. 471, 481:

> [T]he practical effect of the Maryland regulation is that all children, even in very large families, do receive some aid. We find nothing in 42 U.S.C. 602(a)(10) that requires more than this. So long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated.

If the persons whom Texas treats as needy but not entitled to benefits must be considered "eligible individuals" under the federal Act and if the quoted language is a binding construction of the Act, appellants are entitled to prevail. In the Department's view, however, they are not "eligible individuals" under the federal Act, and the quoted language was unnecessary to the decision in *Dandridge*.

There is considerable support in the legislative history of Section 402(a)(10) for the state's view that the provision was designed only to prevent the use of waiting lists for persons to whom payments of benefits would otherwise be made. See H. Rep. No. 1300, 81st Cong., 1st Sess. 48, 148 (1949); 95

Cong. Rec. 13934 (1949) (remarks of Rep. Forand). Under that view, an "eligible individual" is one who has been found eligible for a payment of benefits, not one who has been found to meet the state's standard of need. The Texas plan does adequately provide for prompt payments to persons found eligible for payments, although not all persons who qualify as needy under the state's standard of need are thus eligible. To read "eligible individual" as referring to the state standard of need is, again, to impose constraints on the manner in which states distribute limited resources. Such an imposition would be unsupported by any legislative history of which we are aware, and contrary to long-established state and administrative practice.

Such a reading of the *Dandridge* language also goes far beyond any matters which can reasonably be thought to have been before the Court or in its contemplation in that case. The question whether a particular method of calculating payments might mean that an otherwise eligible family would receive no payments was simply not before the Court. The family in that case was receiving payments, and hence was "eligible" in whatever sense that word might be used. It was unnecessary to go further and rule on a problem not before the Court, whether and under what circumstances a state could deny benefits entirely to a family which met its standard of need, but whose resources were nonetheless greater than the amount the state would ordinarily give to a family with no resources whatever.

3. The Department does not believe that its views, set forth above, are inconsistent with the views it expressed in its *amicus curiae* memorandum in *Engelman* v. *Amos,* No. 931, this Term. That case involved a claim of inconsistency between New Jersey regulations and Section 402(a)(8) of the Act, which provides for a mandatory disregard of certain earned income in order to encourage assistance recipients to work and eventually remove themselves from the welfare rolls. The New Jersey provisions resulted in a lower cut-off point for welfare eligibility, which the Department believes inconsistent with Section 402(a)(8). While that Section has not been put in issue here, the effect of the Texas method is also to end eligibility for welfare assistance at a lower level than might otherwise be the case;[6] the New Jersey and the Texas provisions both appear to have been animated by the same desire to distribute limited state welfare funds in a manner which assures a greater proportion to those least able to care for themselves.

---

[6] The general operation of Section 402(a)(8) is explained at length in our memorandum in *Engelman* v. *Amos*, *supra*. Under the Texas method, eligibility for payments ceases once attributable income reaches 75 percent of need—$150 in the example used consistently in this brief. Through application of the Section 402(a)(8) disregard, an otherwise eligible person receiving earned income would remain eligible until his income reached $297 per month ($297 less $30 is $267; one-third of $267 is $89, leaving $178; less work expenses of $28 equals $150). Under the method appellants propose as mandatory, however, Texas would be required to continue to pay benefits on a ratably reduced basis until attributable income reached the need level—$200 in the example. If Section 402(a)(8) applied, that point would not be reached until his earnings reached $372 per month ($372 less $30, less one-third of $342, less $28 work expenses, equals $200).

The difference between this case and the New Jersey case is that the outcome here is not the result of a method applied only to persons subject to Section 402(a)(8). The Texas method is applied in all benefit calculations, and for that reason can fairly be described as part of the determination of eligibility. In the course of that determination, Texas properly applies Section 402(a)(8); it invokes no maximum or limitation calculated without reference to this disregard provision. New Jersey, on the other hand, invokes a method which applies only to persons receiving benefits pursuant to Section 402(a)(8), and which New Jersey cannot admit is part of its determination of eligibility. If it is part of that determination, then it falls because of its failure to incorporate the disregard of earned income required by Section 402(a)(8); if it is not a part of that determination, then New Jersey has denied payments to persons it has determined are eligible for payments, in contravention of Section 402(a)(10).

4. Appellants also raise equal protection claims which had been resolved against their contentions at the first hearing, and then preserved on remand. To the extent these are factual in nature, asserting a racially discriminatory purpose or effect, we believe they are best left to the parties for argument. There may also be some suggestion, however, that in reducing AFDC payments to a greater extent than its payments under other federally funded programs, Texas has violated the federal statutes or regulations. The Department believes there has been no such violation. Although all the programs are contained in the Social

Security Act, and there are certain common provisions, the federally funded public assistance programs are nonetheless separate and distinct. A state may adopt one or several, as it chooses. Similarly, so long as it conforms to the federal standards for the particular program, it may administer its programs separately, and adopt differing funding policies. Of course it could not do so to effect racial discrimination. But nothing in the federal provisions requires that it adopt the same fiscal policy toward each of the federal programs in which it chooses to participate.

CONCLUSION

For these reasons, we believe that the district court was correct in its judgment on the issues addressed above. We recognize, however, that there is language in this Court's prior opinions suggesting a contrary result and that, as in *Engelman* v. *Amos, supra,* the matter is of perhaps excessive complexity for summary resolution of the merits. Thus, while we believe the judgment below was correct in these respects, we do not urge summary affirmance.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1971.

APPENDIX

MAY 1971.

SUMMARY OF PAYMENT METHODS

A. 100% of Standard and 100% of Deficit.

1. Connecticut
2. Colorado
3. Hawaii
4. Illinois
5. Massachusetts
6. Michigan
7. Minnesota
8. New Hampshire
9. New Jersey
10. North Dakota
11. South Dakota
12. Pennsylvania
13. Rhode Island
14. Vermont

B. Income subtracted from full standard; deficit ratably reduced.

1. Arizona
2. Florida
3. South Carolina

C. Standard ratably reduced; income subtracted from reduced standard.

1. District of Columbia	(75%)
2. Idaho	(88.6%)
3. Iowa	(81%)
4. Kansas	(94%)
5. Louisiana	(51%)
6. Maryland	(59.5%)
7. Montana	(88%)
8. New York	(90%)
9. North Carolina	(86%)
10. Ohio	(6[illegible]%)
11. Oklahoma	(85%)
12. Oregon	(80%)
13. Texas	(75%)
14. Utah	(70%)
15. West Virginia	(52%)
16. Wisconsin	(85%)

D. Income subtracted from full standard; payment limited by maximum

1. Alaska
2. California
3. Georgia
4. Indiana
5. Maine
6. Missouri
7. Nebraska
8. Tennessee
9. Washington

E. Income subtracted from full standard; deficit rotatably reduced and limited by a maximum

1. Alabama ---------- (35%)
2. Mississippi ---------- (30%)
3. New Mexico ---------- (88%)
4. Wyoming ---------- (90%)

F. Standard ratably reduced; income subtracted from reduced standard and limited by maximum

1. Delaware ---------- (82.6%)
2. Kentucky ---------- (73.1%)
3. Virginia ---------- (90%)

G. Other

1. Arkansas
2. Nevada

U.S. GOVERNMENT PRINTING OFFICE: 1971